

## STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 20,678  
 )  
Appeal of )

# INTRODUCTION

The petitioner (by and through his mother) appeals a decision by the Office of Vermont Health Access denying his request for comprehensive orthodontic authorization under Medicaid. The issue is whether the petitioner's condition meets the standard of severity for Medicaid coverage.

## FINDINGS OF FACT

1. The petitioner is twelve years old. His orthodontist submitted a Medicaid request for orthodontic treatment in December 2006 on a form prepared by the Department. On that form he checked only that the petitioner's dentition met one minor criterion, "1 impacted cuspid". There was no indication on the form that there was any "other handicapping malocclusion". The orthodontist also noted on the form that it was "submitted at parent's request".

2. In a decision dated December 14, 2006 the Department denied this request after determining that the

petitioner's orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment. Based on the diagnostic materials submitted by the orthodontist the Department determined that the impacted tooth was a bicuspid, not a cuspid, and that, therefore, the petitioner did not even meet one of the minor criteria (see *infra*).

3. At a hearing held on January 8, 2007, the petitioner's mother alleged that Medicaid had approved her son for orthodonture in 2005 with another orthodontist that the family had then decided not to use. The matter was continued to allow the Department to look into this apparent discrepancy and for the petitioner to submit an updated report from his present orthodontist.

4. At a status conference held on February 20, 2007 the Department represented that the approval in 2005 had been for "interceptive" orthodontic treatment that did not entail braces. The petitioner's mother conceded that in 2005 she did not follow up on this approval, but instead had sought a second opinion, which eventually led to the present request for "comprehensive" orthodontic treatment. The matter was continued to allow the petitioner to obtain further evidence as to the medical need for comprehensive orthodonture.

5. Unfortunately, on March 14, 2007 the petitioner's orthodontist simply resubmitted his December 2006 request to the Department, without any further comment or rationale. At a status conference on March 20, 2007 the Department agreed to furnish the petitioner's mother and the Board with copies of all the materials it had received to date, including the 2005 request for interceptive treatment. The parties agreed that the petitioner would be given a final opportunity to furnish additional evidence from his orthodontist in light of these materials.

6. At a status conference on May 15, 2007 the petitioner's mother conceded that she could obtain no further statement from her son's orthodontist regarding medical necessity.

7. Although the 2005 request for interceptive orthodonture had listed 2 minor criteria, the Department concedes that at that time it did not scrutinize the request because it was for limited treatment. There is no indication from the petitioner's present orthodontist that he agrees with the 2005 diagnosis that had been submitted to (and approved by) the Department.

ORDER

The Department's decision is affirmed.

REASONS

The Department has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. W.A.M. §§ M622.1, 622.2, and 622.3. The regulations, and rulings by the Board and the Vermont Supreme Court, further provide that to be considered medically necessary the patient's condition must meet or equal one major or two minor malocclusions according to diagnostic criteria adopted by the Department's dental consultant or if otherwise medically necessary under EPSDT found at M100. See M622.4.

The criteria require that the malocclusion be severe enough to meet a minimum of 1 major or 2 minor diagnostic treatment criteria as follows:

## Major Criteria

- Cleft palate
- 2 impacted cuspids
- Other severe cranio-facial anomaly

## Minor Criteria

- 1 Impacted cuspid
- 2 Blocked cupsids per arch (deficient by at least 1/3 of needed space)
- 3 Cogenitally missing teeth, per arch (excluding third molar)
- Anterior open bite 3 or more teeth (4+mm)
- Crowding, per arch (10+ mm)
- Anterior crossbite (3+ teeth)
- Traumatic deep bite Impinging on palate
- Overjet 10+mm (measured from labial to labial)

In this matter, the petitioner initially presented evidence that he met only one of the minor criteria used by the Department to determine severity for the orthodonture program. After the Department took issue with even this diagnosis, the petitioner was unable to obtain any evidence that he met any criteria, or that his dental problems are equally as severe or "handicapping" as any combination of those impairments that are listed. Nor could he obtain any medical evidence that he has any other medical condition that necessitates orthodonture as part of its treatment.

Inasmuch as the Department's decision in this matter is supported by the evidence and in accord with the pertinent

regulations it must be upheld. 3 V.S.A. § 3091(d), Fair  
Hearing Rule No. 17.

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